IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
MONDAY, THE TWENTY FIRST DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY
and
THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT APPEAL NO : 158 of 2001

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 01/02/2001 in W.P No. 10520 of 2000 on the file of the High Court.)

Between:

Toddy Tappers Cooperative Society rep. by its President M.Narsa Goud, S/o.Rama Goud, Age - 65 yrs, R/o.Medipalli (V) Ramagundam (M), Karimnagar District.

..... APPELLANT

AND

1 The Commissioner of Prohibition and Excise, Govt. of A.P., Nampally, Hyderabad.
2 The Superintendent of P&E, Functional Registrar, Karimnagar District.
3 The CI of P&E, Godavarikhani, Karimnagar District.
4 Toddy Tappers Cooperative Society rep. by its President B.Yadagiri Goud, Khazepalli (V), Ramagundam (M), Karimnagar District.

.....RESPONDENTS

Counsel for the Appellant: Sri C.V.Nagarjuna Reddy.

Counsel for the Respondent No 1.: GP FOR PROHIBITION & EXCISE

Counsel for the Respondent No.4: Sri T.Amarnath Goud.

The Court made the following Judgment: (per Sri B. Sudershan Reddy, J)

The un-successful writ petitioner is the appellant in this writ appeal preferred against the order, dated 1-2-2001, made in Writ Petition No.10520 of 2000 passed by a learned single Judge of this Court dismissing the writ petition filed by the appellant.

2. The appellant herein, the toddy tappers co-operative society named as Geetha Karmeeka Parisramika Sangham, Medipalli village, Ramagundam Mandal, Karimnagar District filed the writ petition invoking the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a writ of mandamus declaring the action of the second respondent granting licence in favour of the fourth respondent for running an additional toddy shop at Krishna Nagar, Medipalli village, Ramagundam mandal, Karimnagar District, as illegal and improper. The appellant also prayed for issuance of consequential directions to the second respondent not to grant any licence in favour of the fourth respondent for additional toddy shop at Krishna Nagar.

3. That as is evident from the narration of facts in the

order under appeal, the appellant Toddy Tappers Co-operative Society came into existence as early as in the year 1967 with 25 tappers as its members. The appellant-society is running toddy shop at Medipalli centre. The appellant-society had submitted an application dated 25-2-2000 to the second respondent herein with a prayer to grant licence under the provisions of the A.P. Excise Act read with the rules for establishing and running an additional toddy shop at Krishna Nagar which is adjacent to Medipalli village. The second respondent having received the application called for a report from the Sub-Divisional Prohibition and Excise Officer and the Sub Divisional Prohibition and Excise Officer accordingly submitted his report on 6-5-2000 recommending that Krishna Nagar is a suitable place for establishing a toddy shop as there is no toddy shop in existence. The officer has further expressed his opinion that the appellant-society has large area of operation and there is a demand for creation of a new toddy shop at Krishna Nagar area by the toddy consuming public and accordingly recommended for establishment of an additional toddy shop at Krishna Nagar.

4. In the meanwhile, the fourth respondent- society which is also running a toddy shop at Khazepalli village submitted an application dated 10-4-2000 to the second respondent requesting the authorities to

grant licence for running second toddy shop at Krishna Nagar. That an enquiry was conducted by the Excise Inspector and he submitted a report

dated 5-5-2000 recommending for establishment of an additional toddy shop at Krishna Nagar but to be run by the fourth respondent-society.

The second respondent having considered both the reports granted permission to the fourth respondent-society to establish additional toddy shop at Krishna Nagar.

5. It is under those circumstances, the appellant herein filed the writ petition. The said writ petition was dismissed by the learned single Judge holding that the appellant has neither a right nor legitimate expectation for questioning the grant of licence in favour of the fourth respondent. The learned single Judge took the view that the licence was granted basing on the recommendations of the Station House Officer.

6. Sri C.V.Nagarjuna Reddy, learned counsel for the appellant submitted that the order under appeal suffers from incurable legal and factual infirmities. It was contended by the learned counsel for the appellant that the learned Judge has committed

an error and totally ignored the main plea of the appellant that Krishna Nagar where the proposed shop is sought to be established is admittedly within the area of operation of the appellant-society in respect of which no licence could have been granted in favour of the fourth respondent-society unless the area of operations were suitably altered by way of amendment of bye-laws under the provisions of the A.P. Co-operative Societies Act,1964 read with the rules framed thereunder.

7. Sri T.Amarnath Goud, learned counsel for the fourth respondent contended that every conceivable aspect has been taken into consideration by the Excise Inspector who submitted the report and the second respondent having duly taken the recommendations in his discretion thought it fit to order and accordingly granted licence for establishment of an additional toddy shop to be run by the fourth respondent at Krishna Nagar. It was also submitted by the learned counsel for the fourth respondent that whether Krishna Nagar is within the area of operation of the appellant-society or not is a question of fact, which satisfactorily cannot be resolved in this

proceeding under Article 226 of the Constitution of India.

8. We have given our anxious consideration to the submissions made by the learned counsel for the appellant, learned Government pleader and as well as the learned counsel for the fourth respondent.

9. Here is a case where the Sub Divisional Prohibition and Excise Officer having made an enquiry into the application of the appellant herein made his recommendations vide proceedings dated 6-5-2000 which is self explanatory expressing his opinion that there is a need to establish an additional toddy shop at Krishna Nagar to be run by the appellant T.T.C.S. Medipalli village. Surprisingly, the Excise Inspector made his recommendation in favour of the fourth respondent society. But both the recommendations are uniform to the effect that there is a need to establish and organize another toddy shop at Krishna Nagar. In this regard, the report dated 5-5-2000 of the Prohibition and Excise Inspector, Godavarikhani makes it very clear that the area of Krishna Nagar is in Ward No.5 and it is three kilometers to the existing

shop of Khazepalli.

10. The question whether Krishna Nagar is in Ward No.4 or not cannot be put in dispute though an attempt was made by the learned counsel for the fourth respondent, inter-alia contending that there is no satisfactory evidence to the effect that Krishna Nagar is situated in Ward No.5. But there is no dispute what-so-ever that Ward Nos.4 and 5 of Krishna Nagar, Medipalli Village, Ramagundam Mandal are within the area of operation of the appellant-society.

11. In the counter affidavit filed by the Sub Divisional Prohibition and Excise Officer, Peddapalli, it is stated in clear and categorical terms in the following manner:

> "It is submitted that though the first shop of T.T.C.S. Khazepalli is located in Ward No.33, it is worth noted that it is adjacent to the area of Krishna Nagar which is situated in Ward No.4."

12. Thus, there is no dispute what-so-ever that the proposed shop to be organized at Krishna Nagar is within the area of operation of the appellant-society. There is also no dispute that the area of operation of fourth respondent-society is confined to Ward No.33, Khazepalli Village, Ramagundem

Mandal. This aspect of the matter has been totally ignored by the learned single Judge while dismissing the writ petition filed by the appellant.

13. In our considered opinion, the second respondent could not have granted licence enabling the fourth respondent to run the toddy shop at Krishna Nagar, which is admittedly within the area of operation of the appellant- society. The fourth respondent-society cannot be allowed to extend its activities beyond its area of operation and intrude into area of operation of the appellant-society.

14. In the circumstances, the decision of the second respondent granting licence in favour of the fourth respondent herein is totally untenable and unsustainable being in violation of the provisions of the A.P. Co-operative Societies Act, 1964 and the rules framed thereunder. The impugned order is accordingly set aside. Consequently, there shall be a direction to the second respondent to forthwith consider the application of the appellant society for grant of licence to establish and organize an additional shop at Krishna Nagar which is admittedly within its area of operation after duly taking into

consideration the recommendations made by the Sub Divisional Prohibition and Excise Officer in accordance with law and in the light of the observations made in this order. The decision in this regard shall be taken within two weeks from the date of receipt of a copy of the order.

15. The Writ Appeal is accordingly allowed. Each party to bear their own costs.

B.Sudershan Reddy,J

Dated:21-6-2004. ---

Ghulam Mohammed,J

Hsd/ks

Note: The Registry is directed to furnish the copy of this order within one week.

b.o.

……ASSISTANT REGISTRAR

//TRUE COPY//

SECTIOIN OFFICER

One fair copy to the Hon'ble Sri Justice B. Sudershan Reddy (for his lordships kind perusal).

To

1 The Commissioner of Prohibition and Excise, Govt. of A.P.,
Nampally,Hyderabad.
2 The Superintendent of P&E, Functional Registrar,
KarimnagarDistrict.
3 The CI of P&E, Godavarikhani, Karimnagar District.
4 2 CCs to the learned Government Pleader for Prohibition
and Excise, High Court Buildings, High Court of Andhra Pradesh, Hyderabad (OUT).
5 3 CD copies.